



ASSEMBLY SUBSTITUTE AMENDMENT 1,  
TO ASSEMBLY BILL 297

1     **AN ACT** *to repeal* 118.134 (1m) (a) 1., 118.134 (1m) (b) 2. and 118.134 (2) (b); *to*  
2     *renumber and amend* 118.134 (2) (a) and 118.134 (4); *to consolidate,*  
3     *renumber and amend* 118.134 (1m) (b) (intro.) and 1.; *to amend* 20.505 (4)  
4     (kp), 118.134 (1) (intro.), 118.134 (1) (a), 118.134 (1) (b), 118.134 (1m) (a) (intro.),  
5     118.134 (1m) (a) 2., 118.134 (1m) (a) 3., 118.134 (3) (a), 118.134 (3) (b) 2., 118.134  
6     (3) (c), 118.134 (3) (d) and 118.134 (5); and *to create* 118.134 (3r), 118.134 (4)  
7     (b), 227.43 (1) (bd), 227.43 (3) (br) and 227.43 (4) (br) of the statutes; **relating**  
8     **to:** race-based nicknames, logos, mascots, and team names and making an  
9     appropriation.

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*Analysis by the Legislative Reference Bureau*

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*The people of the state of Wisconsin, represented in senate and assembly, do  
enact as follows:*

**SECTION 1.** 20.505 (4) (kp) of the statutes is amended to read:

20.505 (4) (kp) *Hearings and appeals fees.* The amounts in the schedule for hearings and appeals services to the department of health services under s. 227.43 (1) (bu), the department of children and families under s. 227.43 (1) (by), the department of public instruction under s. 227.43 (1) (bd), and to all agencies under s. 227.43 (1m). All moneys received from the fees charged under s. 227.43 (3) (br), (c), (d), and (e) shall be credited to this appropriation account.

**SECTION 2.** 118.134 (1) (intro.) of the statutes is amended to read:

118.134 (1) (intro.) Notwithstanding s. 118.13 and except as provided in sub. (3m), a school district resident may object to the use of a race-based nickname, logo, mascot, or team name by the school board of that school district by filing a complaint containing a number of signatures of school district electors equal to at least 10 percent of the school district's membership, as defined in s. 121.004 (5), with the state superintendent. ~~If the complainant objects to the use of a nickname or team name by the school board, the state superintendent shall immediately review the complaint and determine whether the use of the nickname or team name by the school board, alone or in connection with a logo or mascot, is ambiguous as to whether it is race-based. A signature on a complaint is valid only if the signature is obtained within the 120-day period before the complaint is filed with the state superintendent.~~ The state superintendent shall do all of the following:

**SECTION 3.** 118.134 (1) (a) of the statutes is amended to read:

118.134 (1) (a) Notify the school board of the receipt of the complaint and ~~of the state superintendent's determination regarding whether the use of the nickname or team name is ambiguous as to whether it is race-based and direct the school board to submit, if applicable, any of the information under sub. (1m) (a).~~

1           **SECTION 4.** 118.134 (1) (b) of the statutes is amended to read:

2           118.134 (1) (b) Except as provided in sub. (1m), schedule refer the complaint  
3 to the division of hearings and appeals for a contested case hearing within 45 days  
4 after the complaint is filed. The division of hearing and appeals shall schedule a  
5 hearing on the referred complaint with reasonable promptness.

6           **SECTION 5.** 118.134 (1m) (a) (intro.) of the statutes is amended to read:

7           118.134 (1m) (a) (intro.) The state superintendent may determine that no  
8 contested case hearing is necessary ~~or that a hearing date may be postponed for the~~  
9 ~~purpose of obtaining additional information from the school board~~ if, no later than  
10 10 days after being notified of the receipt of the complaint, the school board submits  
11 evidence to the state superintendent that demonstrates all of the following:

12           **SECTION 6.** 118.134 (1m) (a) 1. of the statutes is repealed.

13           **SECTION 7.** 118.134 (1m) (a) 2. of the statutes is amended to read:

14           118.134 (1m) (a) 2. The A federally recognized American Indian tribe under  
15 ~~subd. 1. that has historical ties to this state~~ has ~~granted~~ entered into an agreement  
16 with the school board under which the tribe grants approval to the school board to  
17 refer to or, depict, or portray the tribe or American Indians, in general, in a specific  
18 nickname, logo, or mascot or to use the name of the tribe or American Indians, in  
19 general, as a team name in the specific manner used by the school board ~~and has not~~  
20 ~~rescinded that approval.~~

21           **SECTION 8.** 118.134 (1m) (a) 3. of the statutes is amended to read:

22           118.134 (1m) (a) 3. The use of the nickname, logo, mascot, or team name that  
23 has been approved by the a tribe ~~as provided in~~ under subd. 2. is the use to which the  
24 school district resident objects in the complaint filed under sub. (1).

1           **SECTION 9.** 118.134 (1m) (b) (intro.) and 1. of the statutes are consolidated,  
2           renumbered 118.134 (1m) (b) and amended to read:

3           118.134 (**1m**) (b) If the state superintendent ~~does any of the following~~  
4           determines that a contested case hearing is not necessary, the state superintendent  
5           shall notify the school district resident who filed the complaint under sub. (1) and the  
6           school board of his or her decision in writing: 1. ~~Determines that a contested case~~  
7           ~~hearing is not necessary.~~ A decision under this subdivision is subject to judicial  
8           review under ch. 227.

9           **SECTION 10.** 118.134 (1m) (b) 2. of the statutes is repealed.

10          **SECTION 11.** 118.134 (2) (a) of the statutes is renumbered 118.134 (2) and  
11          amended to read:

12          118.134 (**2**) ~~Except as provided in par. (b), at At the hearing, the school board~~  
13          district resident who filed the complaint under sub. (1) has the burden of proving by  
14          clear and convincing evidence that the use of the race-based nickname, logo, mascot,  
15          or team name ~~does not promote~~ promotes discrimination, pupil harassment, or  
16          stereotyping, as defined by the state superintendent by rule.

17          **SECTION 12.** 118.134 (2) (b) of the statutes is repealed.

18          **SECTION 13.** 118.134 (3) (a) of the statutes is amended to read:

19          118.134 (**3**) (a) ~~The state superintendent~~ division of hearings and appeals shall  
20          issue a decision and order within 45 days after the hearing. If the state  
21          superintendent division of hearings and appeals finds that the use of the race-based  
22          nickname, logo, mascot, or team name does not promote discrimination, pupil  
23          harassment, or stereotyping, the ~~state superintendent~~ division of hearings and  
24          appeals shall dismiss the complaint. Except as provided in pars. (b) and (d), if the  
25          ~~state superintendent~~ division of hearings and appeals finds that the use of the

1 race-based nickname, logo, mascot, or team name promotes discrimination, pupil  
2 harassment, or stereotyping, the ~~state superintendent~~ division of hearings and  
3 appeals shall order the school board to terminate its use of the race-based nickname,  
4 logo, mascot, or team name within 12 months after issuance of the order.

5 **SECTION 14.** 118.134 (3) (b) 2. of the statutes is amended to read:

6 118.134 (3) (b) 2. a. If, at the hearing under sub. (2) or after a decision and order  
7 have been issued under par. (a), the school board presents evidence to the state  
8 ~~superintendent~~ division of hearings and appeals that extenuating circumstances  
9 render full compliance with the decision and order within 12 months after the  
10 issuance of that decision and order impossible or impracticable, the ~~state~~  
11 ~~superintendent~~ division of hearings and appeals may issue an order to extend the  
12 time within which the school board must terminate its use of the race-based  
13 nickname, logo, mascot, or team name. Except as provided in subd. 2. b., the  
14 extension may not exceed 24 months and shall apply only to those portions of the  
15 decision and order to which extenuating circumstances apply.

16 b. The ~~state superintendent~~ division of hearings and appeals may extend the  
17 time granted to a school board under subd. 2. a. if the school board presents evidence  
18 to the ~~state superintendent~~ division of hearings and appeals that compliance with  
19 a portion of the decision and order issued under par. (a) may be accomplished through  
20 a regularly scheduled maintenance program and that the cost of compliance with  
21 that portion of the decision and order exceeds \$5,000. The extension granted under  
22 this subd. 2. b. may not exceed 96 months and applies only to that portion of the  
23 decision and order with which compliance will be accomplished through the  
24 regularly scheduled maintenance program and that costs more than \$5,000.

25 **SECTION 15.** 118.134 (3) (c) of the statutes is amended to read:

1           118.134 (3) (c) ~~Decisions of the state superintendent under this subsection are~~  
2           subject to judicial review under ch. 227. The venue for a proceeding to review a  
3           decision under this section is the circuit court in any county in which territory of the  
4           school district is located.

5           **SECTION 16.** 118.134 (3) (d) of the statutes is amended to read:

6           118.134 (3) (d) No school district is required by to comply with a decision and  
7           order issued under this subsection ~~on or before July 1, 2011~~ the effective date of this  
8           paragraph .... [LRB inserts date], to terminate the use of a race-based nickname,  
9           logo, mascot, or team name ~~shall be required to comply with the terms of that decision~~  
10          ~~and order until January 15, 2013.~~

11          **SECTION 17.** 118.134 (3r) of the statutes is created to read:

12          118.134 (3r) A school district may not be a member of an interscholastic  
13          athletic association that prohibits the use of a nickname, logo, mascot, or team name  
14          on the basis that the nickname, logo, mascot, or team name is race-based unless the  
15          use of the nickname, logo, mascot, or team name violates a decision and order issued  
16          under sub. (3) on or after the effective date of this subsection .... [LRB inserts date].

17          **SECTION 18.** 118.134 (4) of the statutes is renumbered 118.134 (4) (a) and  
18          amended to read:

19          118.134 (4) (a) ~~The~~ Except as provided in par. (b), the state superintendent  
20          shall promulgate rules necessary to implement and administer this section.

21          **SECTION 19.** 118.134 (4) (b) of the statutes is created to read:

22          118.134 (4) (b) The state superintendent may not promulgate a rule that  
23          creates a presumption that a nickname, logo, mascot, or team name is race-based  
24          or promotes discrimination, pupil harassment, or stereotyping.

25          **SECTION 20.** 118.134 (5) of the statutes is amended to read:

1           118.134 (5) Any school board that uses a race-based nickname, logo, mascot,  
2           or team name in violation of sub. (3) shall forfeit not less than \$100 nor more than  
3           \$1,000. Each day of use of the race-based nickname, logo, mascot, or team name in  
4           violation of sub. (3) constitutes a separate violation. The state superintendent may  
5           not assess or collect a forfeiture under this subsection for a use that violates a  
6           decision and order issued under sub. (3) before the effective date of this subsection  
7           .... [LRB inserts date].

8           **SECTION 21.** 227.43 (1) (bd) of the statutes is created to read:

9           227.43 (1) (bd) Assign a hearing examiner to preside over any hearing of a  
10          contested case which is referred by the state superintendent under s. 118.134 (1).

11          **SECTION 22.** 227.43 (3) (br) of the statutes is created to read:

12          227.43 (3) (br) The administrator of the division of hearings and appeals may  
13          set the fees to be charged for any services rendered to the department of public  
14          instruction by a hearing examiner under this section. The fee shall cover the total  
15          cost of the services less any costs covered by the appropriation under s. 20.505 (4) (f).

16          **SECTION 23.** 227.43 (4) (br) of the statutes is created to read:

17          227.43 (4) (br) The department of public instruction shall pay all costs of the  
18          services of a hearing examiner, including support services, assigned under sub. (1)  
19          (bd), according to the fees set under sub. (3) (br).

20          **SECTION 24. Nonstatutory provisions.**

21          (1) A complaint objecting to the use of a race-based nickname, logo, mascot, or  
22          team name filed with the state superintendent of public instruction before the  
23          effective date of this subsection for which a decision and order has not been issued  
24          under section 118.134 (3) of the statutes is void.

25          **SECTION 25. Initial applicability.**

(1) The treatment of section 118.134 (1) (intro.), (a), and (b), (1m) (a) (intro.), 1., 2., and 3., and (2) (a) and (b) of the statutes first applies to a complaint objecting to the use of a race-based nickname, logo, mascot, or team name filed with the state superintendent of public instruction on the effective date of this subsection.

**(END)**